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IN THE CIRCUIT COURT OF SAINT LOUIS COUNTY
STATE OF MISSOURI

HOWARD L. FOX, as an individual and)
as representative of a class of individuals)
similarly-situated,)
Plaintiff)

Cause No.

0982-CC000410

Division No.

vs.)

ETHEX CORPORATION)

Registered Agent:)
CT Corporation)
120 S. Central Ave.)
Clayton, MO 63105)

Defendant)

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CLASS ACTION PETITION

Plaintiff Howard L. Fox ("Plaintiff") brings this action on behalf of himself and all others similarly situated against Defendant Ethex Corporation ("Ethex").

INTRODUCTION

1. This action is brought by Plaintiff on behalf of himself and a proposed class of persons ("Class A") and other entities who purchased oversized pharmaceutical tablets from Defendants.
2. This action is also brought by Plaintiff on behalf of himself and a proposed class of persons ("Class B") and who consumed oversized Morphine Sulfate tablets (produced and distributed by Defendant) and suffered from overdoses as a result.

3. The term “oversized” as used herein refers to a condition in which a pharmaceutical tablet contains a dosage, or quantity of medication, that is larger than the dosage or quantity represented by the manufacturer on packaging, inserts or tablets.
4. Plaintiff is a resident of Washington County, Missouri.
5. Ethex has as its principal place of business or corporate headquarters One Corporate Woods Drive, Saint Louis, Missouri 63044, which is located in Saint Louis County, Missouri.
6. Ethex was organized for the purpose of, and engages in the business of, manufacturing and selling at wholesale and retail, and dealing in, all kinds of medicinal, chemical, pharmaceutical and other useful preparations for scientific, medicinal and domestic use.
7. Ethex was also organized for the purpose, and engages in the business, of manufacturing and selling proprietary medicines, remedies, drugs and chemicals.
8. Ethex manufactured and sold drugs/tablets (hereinafter collectively referred to as “Tablets”) including:
 - a. Hydromorphone HCl,
 - b. Propafenone HCl,
 - c. Isosorbide Mononitrate,
 - d. Morphine Sulfate,
 - e. Dextroamphetamine Sulfate.
9. Ethex sold and distributed Tablets that were oversized.

10. The oversized Tablets contained dosages significantly larger than, or twice as large as, the dosages represented by Ethex.
11. Plaintiff purchased and consumed Morphine Sulfate tablets produced by Defendant, which contained dosages significantly in excess of the dosages represented by Ethex.
12. Plaintiff believed he was consuming a prescribed dosage of 60 milligrams.
13. The exterior of the tablets indicated that the dosage amounted to 60 milligrams per tablet; however, the size of the tablets and dosage were significantly greater than 60 milligrams.
14. As a result of his consumption of the enlarged tablets, Plaintiff suffered from a decrease in, or loss of consciousness.
15. As a result of his consumption of the enlarged tablets, Plaintiff received emergency medical treatment and was hospitalized on June 6, 2008, June 7, 2008, June 8, 2008, and June 9, 2008.
16. Plaintiff was diagnosed as having suffered from an “apparent overdose, or over sensitivity” to Ethex’s Morphine Sulfate tablet.
17. This action is brought by Plaintiff against Defendant to recover for Plaintiff and for all others similarly situated, herein referred to as Class A, all money paid by Plaintiff and class members for Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
18. This action is also brought by Plaintiff against Defendant to recover for Plaintiff and for all others similarly situated, herein referred to as Class B,

damages caused by consumption of oversized Morphine Sulfate tablets produced by Defendant.

19. Plaintiff contends that Ethex, in selling oversized tablets, was negligent and in violation of Missouri statutory and common law.
20. Plaintiff contends that Ethex, in mislabeling its tablets, was negligent and in violation of Missouri statutory and common law.
21. The tablets were produced in Missouri.
22. The tablets were distributed to Missouri residents.

CLASS ACTION ALLEGATIONS

23. Classes A and B are believed to comprise many thousands of Customers, the joinder of which is impracticable, and the members of the class are so numerous that it is impractical to bring them before the Court in this action. Moreover, the amount of damages suffered individually by each member of both classes is so small as to make suit by each individual member of the classes economically unfeasible.
24. Class treatment of the claims asserted herein will provide substantial benefit to both the parties and the court system. A well-defined commonality of interest in the questions of law and fact involved affects Plaintiff and all members of the classes.
25. There are common questions of law and fact applicable to the claims asserted on behalf of Class A. The common questions include:

- a. Whether Ethex acted with malice or the necessary degree of recklessness for the imposition of punitive damages;
 - b. Whether Ethex violated common-law and statutory duties regarding the sale, distribution and marketing of its tablets.
 - c. Whether this action is maintainable as a class action;
 - d. Whether customers who paid money for Ethex's medication have the right to recover that amount of money from Ethex.
26. There are common questions of law and fact applicable to the claims asserted on behalf of Class B. The common questions include:
- a. Whether Ethex acted with malice or the necessary degree of recklessness for the imposition of punitive damages;
 - b. Whether Ethex violated common-law and statutory duties regarding the sale, distribution and marketing of its tablets.
 - c. Whether this action is maintainable as a class action.
 - d. Whether members of the proposed class have the right to recover damages for injuries sustained as a result of involuntarily overdosing on tablets produced by Ethex.
27. Plaintiff's claims are typical of the claims of the proposed classes and Plaintiff will fairly and adequately represent and protect the interests of the proposed classes. Plaintiff does not have any interest antagonistic to those of either class. Plaintiff has retained competent and experienced counsel in the prosecution of this type of litigation. The questions of law and fact common

to the members of the classes, some of which are set out above, predominate over any questions affecting only individual members of the classes.

28. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because members of each class number in the thousands and individual joinder is impracticable. The expenses and burden of individual litigation would make it impracticable or impossible for proposed members of the classes to prosecute their claims individually. Trial of Plaintiff's claims is manageable.
29. Unless a class is certified, Ethex will retain monies received as a result of its manufacturing and sales violations. Unless a class-wide injunction is issued, Ethex will continue to commit violations against customers.
30. This action is maintainable as a class action pursuant to Rule 52.08 of the Missouri Rules of Civil Procedure and pursuant to section 407.025.3 of the Missouri Revised Statutes.

COUNT 1 – STRICT LIABILITY – PRODUCT DEFECT

31. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
32. Ethex sold tablets, including Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets in the course of Ethex's business.
33. The tablets were in a defective condition when sold in that they contained dosages exceeding the correct and represented dosage.

34. The tablets were unreasonably dangerous when put to their reasonably anticipated use.
35. The tablets were used in a manner reasonably anticipated.
36. Plaintiff and members of proposed Class A paid money for unsafe and unusable tablets.
37. Plaintiff and members of proposed Class B suffered overdoses as a result of the excessive dosages.
38. Ethex's actions were willful, wanton or conducted with reckless disregard for the well-being of its customers and others.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 2 – BREACH OF COMMON LAW IMPLIED WARRANTY OF FITNESS

FOR CONSUMPTION

39. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
40. Ethex sold Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets for human consumption.
41. Plaintiff and members of proposed Class B ate the Tablets.
42. All tablets, when sold by Ethex, were unfit for human consumption.
43. As a direct result of thereof, Plaintiff and members of proposed Class B suffered overdoses.

WHEREFORE, Plaintiff and members of proposed Class B request and pray for the relief set forth below in the Request for Relief.

COUNT 3 – STRICT LIABILITY – FAILURE TO WARN

44. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
45. Ethex sold Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets in the course of Ethex's business.
46. The tablets were, at the time of sale, unreasonably dangerous.
47. The tablets, when put to a reasonably anticipated use without knowledge of their actual dosage, were unreasonably dangerous.
48. The tablets were used by Plaintiff and all members of Proposed Class B in a manner reasonably anticipated.
49. Plaintiff and all members of Proposed Class B suffered overdoses as a result of the tablets being sold without adequate warning.
50. Ethex's actions were willful, wanton or conducted with reckless disregard for the well-being of its customers, intended consumers and others.

WHEREFORE, Plaintiff and members of proposed Class B request and pray for the relief set forth below in the Request for Relief.

COUNT 4 – BREACH OF EXPRESS WARRANTY UNDER UNIFORM

COMMERCIAL CODE, R.S.Mo. §400.2-313

51. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
52. Ethex sold Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
53. Plaintiff purchased one or more of the above tablets produced by Defendants.
54. Defendants represented to Plaintiff and class members that the dosages or size of the tablets were significantly smaller than the actual dosages or size.
55. Such representation was made to induce Plaintiff and class members to purchase the tablets.
56. The tablets did not conform to Ethex's representations.
57. Defendant had actual notice that the tablets did not conform to Ethex's representations.
58. As a direct result of the non-conformity of the tablets, Plaintiff and members of Class B suffered overdoses.
59. As a direct result of the non-conformity of the Tablets, Plaintiff and members for proposed Class A received unsafe and unusable tablets.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 5 – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

UNDER UNIFORM COMMERCIAL CODE

60. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
61. Ethex sold the Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
62. Plaintiff and each member of class purchased at least one of the above tablets.
63. Plaintiff and class members used tablets for the intended purpose of the tablets.
64. Defendant received notice that the tablets were not fit for their intended purpose.
65. Plaintiff and class members were damaged as a result of the fact that the tablets were not fit for their intended purpose.
66. Plaintiff and members of proposed Class A paid money for the tablets; and said tablets were unusable and unsafe.
67. Plaintiff and members of proposed Class B suffered from overdoses as a result of the enlarged dosages.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 6 – PRODUCTS LIABILITY – NEGLIGENT MANUFACTURE,

DESIGN, OR FAILURE TO WARN

68. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.

69. Ethex manufactured specific lots of Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
70. Ethex designed specific lots of Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
71. The tablets were defective in that the dosages were different from the dosages described by Ethex.
72. The tablets were hazardous in that the dosages were greater than the dosages described by Ethex.
73. The tablets consumed by Plaintiff, members of Class A and members of Class B were put to their reasonably expected use.
74. Ethex failed to use ordinary care to manufacture or design the product to be reasonably safe.
75. Ethex failed to use ordinary care to adequately warn of the risk of harm from consuming an oversized tablet.
76. Ethex failed to use ordinary care to adequately warn of the risk of harm from consuming a tablet of unknown dosage.
77. As a result of Ethex's failure to warn and failure to use ordinary care to manufacture or design its tablets, Plaintiff and proposed members of Class A were damaged in that they paid money for unusable and unsafe drugs.
78. As a result of Ethex's failure to warn and failure to use ordinary care to manufacture or design its tablets, Plaintiff and proposed members of Class B

were damaged in that they suffered overdoses as a result of consuming Ethex's oversized tablets.

79. Ethex's actions were willful, wanton or conducted with reckless disregard for the well-being of its customers and others.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 7 – NEGLIGENTLY SUPPLYING DANGEROUS INSTRUMENTALITY

80. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
81. Ethex supplied Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
82. The tablets were oversized and were therefore dangerous when put to a reasonably expected use.
83. The tablets were put to a reasonably expected use.
84. Ethex had no reason to believe that those for whose use the tablets were supplied would realize, understand or know their dangerous condition.
85. Defendant knew or had samples of these tablets; and in the exercise of ordinary care should have known of their oversized nature.
86. Ethex failed to adequately warn of the dangerous condition and was therefore negligent.

87. As a direct result of Ethex's negligence, Plaintiff and members of proposed Class A paid money for unsafe and unusable tablets.
88. As a direct result of Ethex's negligence, Plaintiff and members of proposed Class B suffered drug overdoses.
89. Ethex's actions were willful, wanton or conducted with reckless disregard for the well-being of its customers and others.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 8 – NEGLIGENCE

90. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
91. Defendant owed Plaintiff and members of proposed Class A and Class B a duty of care in the manufacture of its Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
92. Defendant owed Plaintiff and members of proposed Class A and Class B a duty of care in the sale of said tablets.
93. Defendant owed Plaintiff and proposed class members a duty of care in the distribution of Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets.
94. Ethex breached its duty by producing oversized and dangerous tablets.

95. Ethex breached its duty by incorrectly labeling its tablets as containing a dosage different from the actual dosage.
96. Ethex breached its duty by incorrectly marketing its tablets as containing a dosage different from the actual dosage.
97. Ethex breached its duty by distributing tablets that contained dosages different from, and larger than, the described dosage.
98. As a result of Ethex's breach, Plaintiff and members of proposed Class A were damaged by paying money for unusable and unsafe tablets.
99. As a result of Ethex's breach, Plaintiff and members of proposed Class B were damaged when they suffered drug overdoses.
100. Ethex's actions were willful, wanton or conducted with reckless disregard for the well-being of its customers and others.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 9 – DAMAGES FOR VIOLATION OF 407.010, et seq., R.S.Mo.

101. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
102. Ethex inaccurately labeled its Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine Sulfate tablets and Dextroamphetamine Sulfate tablets; and said act constituted a false pretense, false promise, or misrepresentation in that the tablets actually contained a dosage different from the dosage represented by Ethex.

103. Ethex misrepresented the contents and dosages of its Hydromorphone HCl tablets, Propafenone HCl tablets, Isosorbide Mononitrate tablets, Morphine
104. Sulfate tablets and Dextroamphetamine Sulfate tablets; and said act constituted a false pretense, false promise, or misrepresentation in that the tablets actually contained a dosage different from the dosage represented by Ethex.
105. Ethex's representations related to the sale or advertisement of its tablets.
106. The tablets purchased by Plaintiff and proposed members of Class A and Class B were used primarily for personal or household use.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

COUNT 10 – MONEY HAD AND RECEIVED

107. Plaintiff incorporates by reference all preceding paragraphs of the petition as if fully set forth herein.
108. Ethex had and received money from Plaintiff and members of Class A and B.
109. Under circumstances and in equity and good conscience, Ethex should be required to pay back all money paid by Plaintiff and class members for the tablets.

WHEREFORE, Plaintiff and members of proposed Classes A and B request and pray for the relief set forth below in the Request for Relief.

REQUEST FOR RELIEF


WHEREFORE, Plaintiff and each member of the proposed classes pray for and request a judgment against Defendant:

- A. Certifying the classes as requested herein;
- B. Entering an order appointing The Smith Law Firm, LLC, as lead counsel for the classes;
- C. Entering broad injunctive relief preventing Ethex from producing, distributing and/or selling pharmaceutical tablets.
- D. Awarding Plaintiff and members of the proposed classes actual damages;
- E. Awarding Plaintiff and members of the proposed class punitive damages in an amount to be determined at trial;
- F. Awarding restitution to Plaintiff and members of the proposed classes;
- G. Awarding pre-judgment interest;
- H. Awarding post-judgment interest;
- I. Awarding attorneys' fees and costs;
- J. Providing such other and further relief as may be fair and reasonable.

JURY DEMAND

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,
THE SMITH LAW FIRM, LLC


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